

Notice of Allowability

Application No.

09/600,094

Examiner

Maureen M. Wallenhorst

Applicant(s)

BUCHWALD ET AL.

Art Unit

1743

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the amendment and terminal disclaimer received on Jan. 9, 2004.
2. ☒ The allowed claim(s) is/are 1-15, 17, 47, 18-21, 35, 37-46, 48-54, 24-25, 55 (renumbered 1-42).
3. ☒ The drawings filed on 22 August 2000 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☒ Interview Summary (PTO-413), Paper No./Mail Date _____
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____

Maureen M. Wallenhorst
Primary Examiner
Art Unit: 1743

EXAMINER'S AMENDMENT

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Karen Fitzsimmons on June 15, 2004.

On line 7 of claim 15, the phrase "detachably coupled to the apparatus" was deleted. On the last line of claim 15 before the period, the following phrase was inserted so as to define the apparatus recited in claim 15 over the prior art reference to Page et al:

--, wherein the sample receiving system and the gas exchange system are present in a modular, cartridge-type insert, the cartridge-type insert being configured to be inserted into the apparatus for connection to the pump, the oxygen level detector and the control system, and removed from the apparatus for disposal--.

Claims 22, 23 and 36 were canceled since the limitations recited in these claims were incorporated into independent claim 15.

Claim 37 was changed to depend from claim 15. On lines 1-2 of claim 37, the phrase "the sample receiving system" was changed to --the cartridge-type insert--.

On page 4, line 17 of the specification, the phrase "Figure 5 illustrates" was changed to -- Figures 5a and 5b illustrate--since there is a Figure 5a and 5b depicted in the drawings.

Art Unit: 1743

2. The following is an examiner's statement of reasons for allowance: Application serial no. 09/600,094 is being allowed in view of the appropriately filed terminal disclaimer received on January 9, 2004, and since none of the prior art of record teaches or fairly suggests a method for determining a patient's blood oxygen transport by measuring a rate of oxygen diffusion across a membrane of a red blood cell of a blood sample from the patient, and correlating the measured rate with both the susceptibility to angina observed in a control population or in the patient, and the residence time of the blood in the heart during stress. In addition, none of the prior art of record teaches or fairly suggests an apparatus for determining a patient's blood oxygen transport comprising a red blood cell transport system and a gas exchange system in a modular cartridge-type insert that can be removably attached to an apparatus having a pump, an oxygen level sensor and a control system for measuring the diffusion of oxygen across a red blood cell membrane.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Art Unit: 1743

3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Maureen M. Wallenhorst whose telephone number is 571-272-1266. The examiner can normally be reached on Monday-Wednesday from 6:30 AM to 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden, can be reached on 571-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Maureen M. Wallenhorst
Primary Examiner
Art Unit 1743

mmw

June 16, 2004

Maureen M. Wallenhorst
MAUREEN M. WALLENHORST
PRIMARY EXAMINER
GROUP 1700